

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a single person household. She first received VHAP benefits during the spring of 2007. The petitioner is an adjunct professor who has taught at several

area colleges. Petitioner has been and is an independent contractor who is not eligible for employee sponsored health insurance. Petitioner is originally from Quebec. Prior to spring 2007, she received medical coverage from the Canadian health system.

2. Petitioner incurred medical expenses during February 2009 connected to an emergency room visit. She was unaware that she was not covered by VHAP or any other state program until she received bills incurred during her emergency room visit. Petitioner's eligibility for CHAP started on March 1, 2009.

3. To understand the gap in petitioner's health coverage, it is important to reconstruct events from fall 2008.

4. On September 30, 2008, the Department sent petitioner a Notice of Decision that she would be eligible for Employer-Sponsored Insurance Assistance (ESIA) through CHAP starting on November 1, 2008. The Department informed petitioner that her income was too high for VHAP but that VHAP would continue through October 31, 2008. VHAP coverage did not end October 31, 2008.

5. On September 30, 2008, the Department sent petitioner a Plan Information Request asking her to have her

employer complete a Health Insurance Plan Information Request (PIRL) by October 12, 2008. The PIRL gives the Department information whether a particular employee is covered by eligible for employee-sponsored health insurance.¹ The Plan Information Request form includes a deadline for return of the PIRL and notice that coverage will end if the form is not returned.

6. The HAEU records indicate that petitioner telephoned on October 22, 2008 because she did not understand why the Department was transferring her to CHAP. She was informed that she was over income for VHAP. The notes indicate that she did not believe this decision was correct. Despite petitioner's disagreement, her case was not treated as a fair hearing request.

7. The Department indicated that they did not receive the PIRL they had requested. Petitioner testified that she had the college send the PIRL. Petitioner supplemented the record after hearing with information from the Benefits Manager at the college (where petitioner worked fall semester 2008) who did not have a copy but remembered petitioner coming to see her about the form.

¹ If the individual is not covered by employer-sponsored health care, the individual's eligibility would be considered under another part of the CHAP program.

8. On December 8, 2008, the Department sent the petitioner a Notice of Decision that CHAP eligibility was cancelled because she did not complete the CHAP process. In bold, the Notice states:

Because you did not complete this process, both your premium assistance eligibility and you VHAP coverage ends December 31, 2008.

9. On December 30, 2008, the petitioner called HAEU. In that call, petitioner explained that she was starting as an adjunct professor at another college on January 15, 2009 and would earn \$7,200 over a five month period. Petitioner wanted the CHAP process to go forward. Petitioner testified that she was left with the impression that her VHAP coverage would continue while the CHAP process went forward. At the reconvened hearing, J.L. testified.² J.L. did not have first hand knowledge of the conversation between petitioner and the HAEU worker but stated the notes indicated that petitioner wanted the CHAP application to go forward and did not ask for a fair hearing.

² The parties had appropriate notice of the reconvened hearing and that it would deal with the December 30, 2008 contact between petitioner and a HAEU worker. At the close of the reconvened hearing, the Department wanted the record to remain open for an affidavit from the HAEU worker who spoke with petitioner. The Hearing Officer did not keep the record open because the Department was on notice and had ample opportunity to have made the HAEU worker available as a witness.

10. On or about March 6, 2009, HAEU submitted information to the Board that the petitioner was appealing her lack of health care coverage by VHAP or CHAP for the months of January and February 2009.

11. The petitioner testified that she found the system confusing.

ORDER

The Department's decision is reversed.

REASONS

Vermont offers two primary medical programs to adults who are not eligible for the Medicaid program. The programs are VHAP and CHAP.

The VHAP program provides health insurance for households whose countable income is equal to or less than 185% of the Federal Poverty Level (FPL). W.A.M. § 4001.

The CHAP program including premium assistance for uninsured adult Vermonters provides coverage for individuals who are not eligible for the Vermont Health Access Program (VHAP) and whose income is equal to or less than 300% of the Federal Poverty Level (FPL). W.A.M. §§ 4102 and 4102.4.

Petitioner received medical coverage from Vermont through VHAP starting in 2007 and then CHAP starting March 1,

2009. There is a two month gap in January and February 2009. Petitioner's income determines whether she is eligible for either VHAP or CHAP. While CHAP is pending for a decision about ESIA, VHAP coverage will continue.

As an adjunct professor, the petitioner is an independent contractor. She is not and has not been eligible for medical insurance coverage through the different colleges that have employed her. The norm is that independent contractors do not qualify for benefits provided employees.

The petitioner testified that she was confused by Vermont's health care system and her testimony about her confusion is credible. Given the number of notices and contacts, one can see how petitioner became confused.

Both VHAP and CHAP are Medicaid waiver programs and subject to the provisions of the Medicaid program unless those provisions are specifically waived. The Department has an affirmative obligation to inform applicants and all other individuals who request information of eligibility requirements, available services, and rights and responsibilities of both applicants and recipients. 42 C.F.R. § 435.905. Stevens v. Dept. of Social Welfare, 159 Vt. 408 (1992).

The Department sent petitioner a Notice of Decision dated December 8, 2008 that her CHAP eligibility was cancelled and that her assistance including VHAP coverage would end December 31, 2008. On December 30, 2008, one day before the operative date of the December 8 notice, petitioner telephoned HAEU and spoke to a worker. Petitioner wanted to do what was necessary to maintain health coverage. She did not think her health coverage under VHAP would end the next day. There is no indication that the HAEU worker informed petitioner that the December 8 Notice of Decision would continue in effect and that her VHAP eligibility would end December 31, 2008.³ There is no indication that petitioner agreed with a decision to have her VHAP benefits end December 31, 2008.

The operative date for this decision is December 30, 2008. On that date, the Department should have taken action to maintain the status quo while processing whether ESIA would apply given petitioner's change in employment. Accordingly, the Department's decision is reversed and VHAP restored for January and February 2009. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

³ If the HAEU worker had informed petitioner that her VHAP would cease December 31, 2008; petitioner could have acted to prevent the closure.

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